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**EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103**

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COUNTY OF SACRAMENTO and  
SACRAMENTO COUNTY WATER AGENCY

BEFORE THE STATE WATER RESOURCES CONTROL BOARD  
STATE OF CALIFORNIA

In Re: Petition to Revise Declaration of Fully Appropriated Stream Systems Designation of American River, Sacramento County	)	COUNTY OF SACRAMENTO’S AND SACRAMENTO COUNTY WATER AGENCY’S OPPOSITION TO AEROJET-GENERAL CORPORATION’S OBJECTION AND MOTION TO EXCLUDE EVIDENCE
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Aerojet-General Corporation’s (“Aerojet”) objection and motion, as it addresses the County of Sacramento’s and Sacramento County Water Agency’s (hereinafter collectively “Sacramento County”) Exhibit No. 1, mischaracterizes both the scope of this hearing and the testimony and evidence that is offered by Sacramento County. The Sacramento County testimony and exhibit at issue are directly related to and material to the subject of this hearing and they are well within the scope of this hearing. As a consequence, Aerojet’s opposition should be disregarded and its motion denied.

Aerojet directly quotes the five “Key Issues” noticed as part of these hearings. Sacramento County Exhibit No. 1 addresses, at the least, the following three Key Issues:

//

1           1.       Should the State Water Resources Control Board (“SWRCB”) revise the  
2 Declaration to allow the Division of Water Rights to accept and process water rights applications  
3 to appropriate “treated groundwater discharged into the American River”?

4           2.       To what extent, if any, have flows in the American River been affected by  
5 groundwater treatment operations, including both pumping and discharging, since the American  
6 River system was included in the FAS Declaration?

7           3.       Has the petitioner provided sufficient hydrological data, water usage data, or other  
8 relevant information to support a determination that there is unappropriated water in the American  
9 River system during the season applied for to justify revising the Declaration for the purpose of  
10 accepting and processing water rights applications related to the discharges of treated  
11 groundwater into the American River?

12           As will be amplified on in its legal brief and opening statement, Sacramento County answers  
13 the first Key Issue in the negative: The SWRCB should not revise the Declaration to allow the  
14 Division of Water Rights to accept and process water rights applications to appropriate “treated  
15 groundwater discharged into the American River.” In Sacramento County’s view, under the  
16 unique facts and circumstances that exist here, that treated groundwater remains “groundwater”  
17 and cannot be considered “new surface water” that would justify a revision of the Declaration.

18           Sacramento County Exhibit No. 1 provides much of the factual predicate for this position  
19 and also provides the type of context which otherwise precludes the SWRCB from fully  
20 addressing the serious and significant question that is before it. Legal citations within that  
21 testimony only provide context for the factual information included within the Exhibit. In this  
22 regard, most of the issues Aerojet complains about are mixed questions of law and fact for which  
23 testimony is appropriate.

24           The SWRCB admonition that “[t]his proceeding does not reach the merits of . . . whether  
25 any ‘new’ water identified in this proceeding is required to go to senior water users, or for  
26 environmental purposes” is relevant to that situation which would exist if the SWRCB’s ultimate  
27 determination is that the Declaration should be revised. In that case, subsequent proceedings  
28 would determine who was entitled to the water in question.

1 The admonition cannot apply to a position and ultimate determination that the Declaration  
2 should not be revised. In that situation there will be no subsequent proceedings. As a  
3 consequence, the SWRCB would need to address, in the instant proceedings, the appropriateness  
4 of an entity's diversion of "treated groundwater discharged into the American River."

5 A failure to do this would provide an inappropriate windfall to entities such as the United  
6 States Bureau of Reclamation ("USBR") and the Department of Water Resources ("DWR")  
7 who have indicated that they would deal with this groundwater as "abandoned water" subject to  
8 their senior rights. Worse yet, Aerojet, the entity that created the problem in the first place, would  
9 benefit from its Regional Water Quality Control Board ("RWQCB") ordered pumping by  
10 selling this water to the highest bidder – an intent made clear through its legal counsel's cross-  
11 examination of the USBR's witness.

12 The SWRCB, of course, has no direct jurisdiction over groundwater. It does, however, have  
13 responsibilities associated with the RWQCB's actions which have given rise to the instant  
14 situation and it also has the clear power and authority to preclude the diversion of "treated  
15 groundwater discharged into the American River" by stating that this water cannot be diverted as  
16 surface water (since it is not surface water). This would allow treated groundwater to be  
17 recovered by those with overlying and appropriative rights to it.

18 In any event, Sacramento County's Exhibit No. 1 directly addresses Key Issues in this  
19 proceeding and is well within the scope of this hearing. As a consequence, Aerojet's motion must  
20 be denied.

21 Dated: June 5, 2002

ROBERT A. RYAN, JR., COUNTY COUNSEL  
COUNTY OF SACRAMENTO

SOMACH, SIMMONS & DUNN  
A Professional Corporation

25 By: \_\_\_\_\_  
26 Stuart L. Somach

27 Attorneys for  
28 COUNTY OF SACRAMENTO and  
SACRAMENTO COUNTY WATER AGENCY

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PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 400 Capitol Mall, Suite 1900, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On June 5, 2002, I served the following document(s):

COUNTY OF SACRAMENTO'S AND SACRAMENTO COUNTY WATER AGENCY'S  
OPPOSITION TO AEROJET-GENERAL CORPORATION'S OBJECTION AND  
MOTION TO EXCLUDE EVIDENCE

X (by electronic submission) on the following parties, at their e-mail addresses as provided, in said action listed below:

Michael Fife [Representing Southern California Water Company]  
Hatch & Parent  
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Ronald M. Stork [Representing Friends of the River]  
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501 West Broadway, Suite 900  
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**AND**

X (by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Somach, Simmons & Dunn, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on June 5, 2002, at Sacramento, California.

\_\_\_\_\_  
Susan Bentley

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